IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 661 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMVIRSINGH SURAJPALSINGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 661 of 2001

MR MUKESH R SHAH for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

..... for Respondent No. 2-8

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 24/09/2001

ORAL JUDGEMENT

In this petition filed under Article 226 of the

Constitution, petitioner seeks to challenge the order dated March 29, 2001 recorded in Criminal Revision Application No. 88 of 2000 by the learned Additional Sessions Judge, Panchmahals at Godhra by which he has dismissed the revision application filed by the present petitioner and thereby confirmed the order dated July 1, 2000 recorded below application of M Case No. 1 of 1997 by the learned Judicial Magistrate, First Class, Railway, Godhra. By the said order, learned JMFC has granted 'B' summary as prayed for by the investigating officer by negativing the objection filed by the present petitioner.

2. Petitioner herein has filed criminal complaint before the learned JMFC, Godhra against respondent Nos. 2 to 8 and one Narendrasingh Ratansingh for commission of the offences under Sections 436, 452, 352, 504, 506(2) and 114 of the IPC. The said complaint was registered as M.Case No. 1 of 1997. The learned JMFC Railway, Godhra sent the case to police to initiate the investigation under Section 156(3) of the Criminal Procedure Code ('Code' for short). On the basis of the said order, concerned officer of the Godhra Railway Police Station, initiated the investigation. During investigation statements of the witnesses were recorded and the panchnama was prepared. In the course of investigation, it was divulged that the petitioner was to be arrested in connection with the crime registered against him vide CR No. 3077 of 1997 but the petitioner got himself admitted to railway hospital with a view to escape his arrest and therefore with a view to save himself from the two offences registered against him, petitioner has filed false and frivolous complaint. Besides this, it was also divulged during the investigation that the petitioner was a Constable of RPF, therefore he could have lodged the complaint before the concerned police station but petitioner intentionally did not file the complaint in the police station and, therefore, concerned police officer of the Railway Police Station, Godhra made a report to the JMFC Godhra praying to grant B-summary.

3. Learned JMFC, Railway, Godhra, on receipt of the report, issued notice to the petitioner. Pursuant to the said notice, petitioner appeared and filed written objections wherein inter alia it is stated that the complaint filed by the petitioner is absolutely true and the investigating officer has not investigated the case honestly. However, in collusion with each other, false report is made by the investigating officer by asking B-summary, therefore, it was requested to file charge sheet against the person named in the said complaint as accused and thereby to reject the B-summary sought for by

the investigating officer.

4. Learned JMFC, Railway, Godhra, on appreciation and evaluation of the investigation report and considering the objection raised by the petitioner accepted the report of the investigating officer and granted B-summary as prayed for and negatived the objection filed by the present petitioner.

5. Aggrieved thereby, petitioner preferred Criminal Revision Application No. 88 of 2000 before the Sessions Court, Panchmahals. The Additional Sessions Judge, Panchmahals on re-appreciation and re-evaluation of the evidence and submissions canvassed at the bar by the learned advocates appearing for the parties, rejected the revision application by confirming the order passed by the learned JMFC, Railway, Godhra and thereby the B-summary granted by the learned JMFC is affirmed which has given rise to the present petition at the instance of the original complainant.

6. Mr. M.R.Shah, learned advocate for the petitioner contended that in the instant case the petitioner has filed cross objections against the report made by the investigating officer by which B-summary was prayed for and therefore such objections amount to complaint within the meaning of Section 4(1)(h) and therefore, JMFC must proceed under Section 204 of the Code in such cases. In the instant case, JMFC has neither considered objections filed by the complainant as a complaint nor he has dealt with the objections raised by the petitioner and mechanically granted the B-summary as prayed for, therefore, order granting B-summary and confirmation order by the revisional Court are vulnerable as they are bad in the eyes of law. To buttress the aforesaid submission, he relied upon the judgement in the case of PATEL HATHIBHAI DWARKADAS V. PATEL KHODABHAI HARGOVANDAS & ANOTHER 1972 (13) GLR 471.

7. Mr. K.T.Dave, learned APP appeared on behalf of the respondent State of Gujarat and opposed the petition by making oral submissions. According to him, concurrent findings of facts recorded by both the Courts below cannot be assailed in a petition filed under Article 226/227 of the Constitution. In the instant case, on the basis of evidence collected by the investigating officer in M.Case No. 1 of 1997 Court found that the complaint is false and frivolous and therefore, B-summary is granted after considering written objections raised by the petitioner. The said order is confirmed by the revisional Court. Therefore, both the orders impugned in

this petition do not require any interference at the hands of this Court while exercising powers under Article 226/227 of the Constitution and urged to reject the petition at the admission stage.

8. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition as well as the documents annexed therewith and both the impugned orders; one recorded by the the learned JMFC Railway , Godhra and second recorded by Additional Sessions Judge, Panchmahals i.e. the revisional Court and the judgement cited at bar.

9. In the case of PATEL HATHIBHAI DWARKADAS'S CASE (SUPRA), this Court has held that before making the final judicial order as regards the grant of any summary, the Magistrate has to consider whether the objection application is a complaint as defined by sec. 4(1)(h) of the Criminal Procedure Code and if he finds that it amounts to a complaint requesting him to issue process or take any other action, he is bound to follow the procedure laid down by Chapter XVI of the Code. It is only thereafter that he can deal with the question of grant of summary. If the Magistrate thinks that there is sufficient ground to issue process for the examination of the complainant and his witnesses, if any, he has to proceed under sec. 204 of the Criminal Procedure Code and in that case there would be no occasion to grant 'B' summary with or without prosecution as asked for by the police because the Magistrate has taken cognizance of the offence under sec. 190(1)(a) of the Code. The objection application given by the complainant against demand of 'B' summary by the police amounted to a complaint within the meaning of sec. 4(1)(h) of the Criminal Procedure Code. It was not only drafted in the form of a complaint but it had also requested the Magistrate to issue process against the accused ignoring the report given by the police. Therefore, the Magistrate was bound to comply with the provisions of Chapters XVI and XVII of the Code.

10. Applying the aforesaid principle laid down by this Court, it is seen from the first impugned order recorded by learned JMFC Railway Godhra, that the learned JMFC has not only examined the evidence collected by the investigating officer but also considered the objections raised by the petitioner. In the said objections, petitioner has reiterated the same facts which were stated in the complaint and during investigation, investigating officer found that it is a false and

frivolous complaint lodged by the petitioner with a view to save himself from the arrest in connection with two offences registered against him. Therefore it cannot be said that the learned JMFC has not considered the objections raised by the petitioner.

11. On having perusal of the order recorded in Criminal Revision Application No. 88 of 2000, by the learned Additional Sessions Judge, Panchmahals, it is clear that he has observed that the petitioner himself has stated before the police that he has not seen any person setting fire to his house, therefore, there is no evidence against the person named in the FIR for commission of the offences lodged in the said complaint. Besides this, on having perusal of the objections raised by the petitioner, I find no primafacie evidence against the person named in the said complaint. Therefore, learned Additional Sessions Judge has confirmed the said order.

12. Seen in the above context, the learned Magistrate has committed no illegality in appreciating the evidence adduced by the investigating officer and in granting B-summary as prayed for. The said order was taken in revision before the learned Additional Sessions Judge, Panchmahals at Godhra who has upheld the same and while exercising powers conferred under Article 226/227 of the Constitution. I find no reason to interfere with the concurrent finding recorded by both the Courts below.

13. It settled principle of law that concurrent findings of facts recorded by both the Courts below cannot be assailed in a petition filed under Article 227 of the Constitution of India since the powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the Courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the Courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus vs. Mohd. Mustaqim & Others, AIR 1984 SC 38, (ii) Khanna Improvement Trust Vs. Land Acquisition Tribunal & Others (1995) 2 SCC 557 and (iii) H.B.Gandhi Vs. M/s Gopinath (1992) Supp. 2 SCC 312.

14. On the facts and in the circumstances emerging

from the record of the case and having regard to the legal position stated above, I do not find any justifiable reason or valid ground to interfere with the orders recorded by both the Courts below. On the contrary the said orders are required to be reaffirmed by this Court.

15. For the foregoing reasons, petition fails and is accordingly rejected at the admission stage itself.

(A.M.Kapadia, J)

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